No. 20879

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

R. J. Lison Company, Inc.,

Petitioner,

vs.

National Labor Relations Board,

Respondent.

On Petition for Review of an Order of the National Labor Relations Board.

PETITIONER'S REPLY BRIEF.

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The Board places great reliance upon the following arguments:

1. Reed and Taber were senior in point of service of the Company's employees, received regular raises and were highly regarded by management until they became the spearhead of the Union's campaign to organize their fellows.

The fact is that Reed had not received a raise for six months prior to his discharge. [TR 228-230].

There is no evidence that either had received a recent wage increase.

There is no evidence they were "highly regarded" until they became the "spearhead" of the Union's campaign. It was Sheldrick who made the decision to terminate Reed and Sheldrick testified of many instances

which indicated he did not hold Reed in high regard. [TR 34, 48, 37, 52, 179].

There is no evidence Respondent was aware they were "spearheading" an organizational drive. After all, between the two of them, they only had to obtain four authorization cards.

In fact, Reed was considered to be a poor union supporter by Lison because he had bragged about crossing a picket line. [TR 215].

There is no evidence Respondent suddenly turned on these two employees. The election was held November 4, 1964. At that time Respondent could conclude that Reed and Taber had voted for the union. The discharges did not take place until about 60 days later.

2. Derelictions of duty, long countenanced by the Company, suddenly became grounds for immediate discharge.

The fact is that Reed was not discharged because he was derelict in his duties. Reed was terminated because service business fell off in the fall of 1964. [TR 132, R-2]. Neither Taber nor Reed denied the Company's claim that service business was falling off in the fall of 1964. Reed was selected as the man to terminate because he was considered by Sheldrick to be the least efficient employee.

Taber's failure to maintain the inventory control cards was not known until the date of his discharge. Taber had been told to let the cards go and catch up on them when he could. [TR 148]. But he had had adequate time to catch up and failed to do so. [TR 70, 211, 218].

3. The inventory control system was so unimportant that after Taber's discharge none was kept for over two months.

The fact is that during this two month period the Company was setting up a new inventory control system to be handled in the office. The cards necessary for the new system were at the printers for six weeks. When the printer delivered the cards, over 5,000 of them had to be prepared. It was little wonder two months elapsed before the inventory control system was operating again. [TR 101-102].

4. Lison was angry when he notified Taber of his discharge.

There is not a shred of evidence that Lison's anger arose out of resentment for union activities. The evidence is that he was angry because Taber had not been doing the job he was paid to do.

5. The Company gave shifting reasons for Reed's discharge.

The fact is that only one reason was ever advanced for Reed's termination. That reason was documented almost a month before the termination when the Company advised the Union it would be necessary to terminate another man for economic reasons. [TR 132, R-2].

The fact that many reasons existed for selecting Reed as the man to terminate only adds to the Company's defense.

The fact remains that none of the indicia of an illegal discharge are present in this case.

In every wrongful discharge case which has come to the attention of this writer, indeed, in every case cited by the Board in its brief, there has been some conduct on the part of the employer to show an illegal motive, *i.e.*, surveillance, threats, promises of benefits, or other unfair labor practices.

Not one of these commonly recognized factors indicating illegal motive is present in this case.

No employee was ever threatened. In fact, they were assured they were free to vote for the union if they wished. [TR 151-152].

The terminations did not follow the election immediately. Reed and Taber have never been replaced. There is no evidence of interrogation, surveillance, or union hostility.

On the contrary, the Company cooperated in the election and agreed to a consent election. The Company recognized the Union and bargained with it after the election. The Company has never rejected the union or the principle of collective bargaining.

Respondent submits this case is based entirely upon surmise and suspicion and is lacking in the quality of proof required to be produced and is very much like *Lozano Enterprises v. National Labor Relations Board*, 357 F. 2d 500 (1966-9th Circuit) in which this Court denied enforcement.

Respondent respectfully requests this Court to make and enter its decree setting aside the Decision and Order of Respondent and dismissing Respondent's cross-petition for enforcement.

SWEENEY, COZY & FOYE,
By M. J. DIEDERICH,
Attorneys for Petitioner.

Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

M. J. DIEDERICH